

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CIT BANK, N.A., Plaintiff, vs. WILLIAM COVINO, BOARD OF DIRECTORS OF EAGLE WOOD VISTAS HOMEOWNERS ASSOCIATION, INC., Defendants.	Case: 7:17-cv-09579-NSR AFFIRMATION IN SUPPORT OF MOTION TO EXTEND TIME TO SERVE AND DIRECT SERVICE BY <u>ALTERNATE MEANS</u>
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Sean K. Monahan, Esq., an attorney duly admitted to practice law before all the Courts of the State of New York, affirms the following to be true under penalty of perjury:

1. I am associated with the law firm of WINDELS MARX LANE & MITTENDORF, LLP, attorneys for plaintiff, CIT Bank, N.A., (the "**Plaintiff**"), in the above action. I am fully familiar with the facts and circumstances set forth herein by virtue of my review of the file pertaining to this matter maintained by my firm.

2. I submit this Affirmation in support of Plaintiffs' motion for an Order: (a) pursuant to FRCP 4(m), extending Plaintiff's time to serve the Summons and Complaint upon defendant Board of Directors of Eagle Wood Vistas Homeowners Association, Inc.; (b) pursuant to FRCP §4(e)(1) and NY CPLR §308(5), directing the manner of service of the Summons and Complaint upon said defendant; or alternatively; (c) pursuant to FRCP §4(e)(1) and NY CPLR §315, permitting service by publication of the Summons upon said defendant; and (d) granting such other and further relief as this Court may deem just and proper.

3. Plaintiff's motion extending its time to serve defendant Board of Directors of Eagle Wood Vistas Homeowners Association, Inc. should be granted because despite Plaintiff's

diligent efforts, Plaintiff has been unable to locate and serve the Summons and Complaint upon said defendant. In addition, Plaintiff requests that the Court direct the manner of service upon said defendant, or, alternatively, permit service by publication.

BACKGROUND

4. Upon information and belief, Defendant Board of Directors of Eagle Wood Vistas Homeowners Association, Inc. ("Carol Gill") has or may claim to have a lien against the Property being foreclosed upon in this action, which Property is known as Section 24, Block 1, Lot 45.2, on the Tax Map of the Town of Warwick, County of Orange, State of New York, more commonly known as 10 Eagle Wood Vista Lane, Pine Island, New York 10969 a/k/a 10 Eagle Wood Vista Lane, Pine Island, New York 10969 (the "**Premises**" or "**Property**"), for unpaid common and/or maintenance charges which is subordinate to Plaintiff's interest in the property.

5. Plaintiff CIT Bank, N.A. is the holder of a certain note and mortgage as properly detailed and explained in Plaintiff's Complaint.

6. On December 6, 2017 Plaintiff commenced this action by the filing of the Summons and Complaint (**Exhibit "A"**), to foreclose on the Mortgage against the Property because on November 11, 2016, William Covino ("Mortgagor") failed to comply with the terms and provisions of the Note and Mortgage by failing to make the monthly installment payments due on that day comprising of principal, interest, and other sums required by the Note and Mortgage and by failing to make all subsequent monthly installment payments due thereafter.

7. All of the defendants except Board of Directors of Eagle Wood Vistas Homeowners Association, Inc. were timely served with copies of the Summons and Complaint. A Copy of the affidavit of service is annexed hereto as **Exhibit "B"**.

**ATTEMPTS TO SERVE BOARD OF DIRECTORS OF EAGLE WOOD VISTAS
HOMEOWNERS ASSOCIATION, INC.**

8. As demonstrated below, despite Plaintiff's diligent efforts, Plaintiff has been unable to locate and serve defendant Board of Directors of Eagle Wood Vistas Homeowners Association, Inc. within the 90-day period prescribed in FRCP 4(m).

9. As set forth in the annexed Affidavit of Non-Service, sworn to on January 4, 2018, and the Supplemental Affidavit, sworn to on April 16, 2018 (**Exhibit "C"**), on December 29, 2017 at 8:10am, Plaintiff's process server attempted to serve defendant Board of Directors of Eagle Wood Vistas Homeowners Association, Inc. by canvassing the area around 10 Eagle Wood Vista Lane, Pine Island, NY 10969, the location of the Property. However, the process server was unable to locate a homeowners association on Eagle Wood Vista Lane in Pine Island, NY. Plaintiff's process server spoke with Joseph Mancuso who accepted service on behalf of defendant William Covino, who indicated that the board of directors was unknown to him. See **Exhibit "C"**.

10. Plaintiff's process server performed a search upon the New York State Department of State, Division of Corporations for Board of Directors of Eagle Wood Vistas Homeowners Association, Inc. and found that it is not a registered entity. See **Exhibit "C"**.

11. Plaintiff's process server performed various internet searches to obtain any possible information on Board of Directors of Eagle Wood Vistas Homeowners Association, Inc. and was unsuccessful in her efforts. See **Exhibit "C"**.

PLAINTIFFS' MOTION SHOULD BE GRANTED

12. No prior application for the relief requested herein has been made before this or any other court.

WHEREFORE, it is respectfully requested that Plaintiff's motion be granted in its

entirety, together with such other and further relief as this Court may deem just and proper.

Dated: New York, New York
April 27, 2018

Respectfully submitted,

WINDELS MARX LANE & MITTENDORF, LLP
Attorneys for Plaintiff TOINY, LLC

By: /s/ Sean K. Monahan
Sean K. Monahan, Esq.
156 West 56th Street
New York, New York 10019
(212) 237-1000